

AMENDED IN SENATE AUGUST 24, 2012

AMENDED IN SENATE AUGUST 6, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1454**

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**Introduced by Assembly Member Solorio**

January 9, 2012

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An act to amend Sections 139.2 and 3209.3 of the Labor Code, relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

AB 1454, as amended, Solorio. Workers' compensation: audiologists.

Existing workers' compensation law generally requires employers to secure the payment of workers' compensation, including medical treatment, for injuries incurred by their employees that arise out of, or in the course of, employment. Existing law requires the Administrative Director of the Division of Workers' Compensation to appoint qualified medical evaluators in each of the respective specialties as required for the evaluation of medical-legal issues.

This bill would also include doctors of audiology who meet specified requirements among those medical professionals who may be appointed by the administrative director as a qualified medical evaluator.

Existing law, for purposes of workers' compensation, defines "physician" to include physicians and surgeons holding specified degrees, psychologists, acupuncturists, dentists, podiatrists, and chiropractic practitioners licensed by California state law and within the scope of their practice, as defined by state law. *Existing law requires that when treatment or evaluation is provided by a psychologist or an*

*audiologist, appropriate medical collaboration be provided when requested by the employer or insurer.*

This bill would also include licensed audiologists, as specified, within that definition of physician. *This bill would also require appropriate medical collaboration be provided when requested by the injured worker or their representative.*

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 139.2 of the Labor Code is amended to  
2 read:

3 139.2. (a) The administrative director shall appoint qualified  
4 medical evaluators in each of the respective specialties as required  
5 for the evaluation of medical-legal issues. The appointments shall  
6 be for two-year terms.

7 (b) The administrative director shall appoint or reappoint as a  
8 qualified medical evaluator a physician, as defined in Section  
9 3209.3, who is licensed to practice in this state and who  
10 demonstrates that he or she meets the requirements in paragraphs  
11 (1), (2), (7), and (8), and, if the physician is a medical doctor,  
12 doctor of osteopathy, doctor of chiropractic, a psychologist, or a  
13 doctor of audiology, that he or she also meets the applicable  
14 requirements in paragraph (3), (4), (5), or (6).

15 (1) Prior to his or her appointment as a qualified medical  
16 evaluator, passes an examination written and administered by the  
17 administrative director for the purpose of demonstrating  
18 competence in evaluating medical-legal issues in the workers'  
19 compensation system. Physicians shall not be required to pass an  
20 additional examination as a condition of reappointment. A  
21 physician seeking appointment as a qualified medical evaluator  
22 on or after January 1, 2001, shall also complete, prior to  
23 appointment, a course on disability evaluation report writing  
24 approved by the administrative director. The administrative director  
25 shall specify the curriculum to be covered by disability evaluation  
26 report writing courses, which shall include, but is not limited to,  
27 12 or more hours of instruction.

28 (2) Devotes at least one-third of total practice time to providing  
29 direct medical treatment, or has served as an agreed medical

1 evaluator on eight or more occasions in the 12 months prior to  
2 applying to be appointed as a qualified medical evaluator.

3 (3) Is a medical doctor or doctor of osteopathy and meets one  
4 of the following requirements:

5 (A) Is board certified in a specialty by a board recognized by  
6 the administrative director and either the Medical Board of  
7 California or the Osteopathic Medical Board of California.

8 (B) Has successfully completed a residency training program  
9 accredited by the American College of Graduate Medical Education  
10 or the osteopathic equivalent.

11 (C) Was an active qualified medical evaluator on June 30, 2000.

12 (D) Has qualifications that the administrative director and either  
13 the Medical Board of California or the Osteopathic Medical Board  
14 of California, as appropriate, both deem to be equivalent to board  
15 certification in a specialty.

16 (4) Is a doctor of chiropractic and meets either of the following  
17 requirements:

18 (A) Has completed a chiropractic postgraduate specialty program  
19 of a minimum of 300 hours taught by a school or college  
20 recognized by the administrative director, the State Board of  
21 Chiropractic Examiners, and the Council on Chiropractic  
22 Education.

23 (B) Has been certified in California workers' compensation  
24 evaluation by a provider recognized by the administrative director.  
25 The certification program shall include instruction on disability  
26 evaluation report writing that meets the standards set forth in  
27 paragraph (1).

28 (5) Is a psychologist and meets one of the following  
29 requirements:

30 (A) Is board certified in clinical psychology by a board  
31 recognized by the administrative director.

32 (B) Holds a doctoral degree in psychology, or a doctoral degree  
33 deemed equivalent for licensure by the Board of Psychology  
34 pursuant to Section 2914 of the Business and Professions Code,  
35 from a university or professional school recognized by the  
36 administrative director and has not less than five years'  
37 postdoctoral experience in the diagnosis and treatment of emotional  
38 and mental disorders.

39 (C) Has not less than five years' postdoctoral experience in the  
40 diagnosis and treatment of emotional and mental disorders, and

1 has served as an agreed medical evaluator on eight or more  
2 occasions prior to January 1, 1990.

3 (6) Is a practicing clinical audiologist licensed by the State of  
4 California who meets all of the following requirements:

5 (A) Holds a doctorate of audiology (Au.D.) or a Ph.D., or both,  
6 in an audiology-related profession from a university training  
7 program recognized by the Speech-Language Pathology and  
8 Audiology and Hearing Aid Dispensers Board, and is licensed by  
9 the Speech-Language Pathology and Audiology and Hearing Aid  
10 Dispensers Board pursuant to Article 3 (commencing with Section  
11 2532) of Chapter 5.3 of Division 2 of the Business and Professions  
12 Code.

13 (B) Has not less than five years' postdoctoral experience in the  
14 practice of audiology.

15 (C) Prior to his or her appointment as a qualified medical  
16 evaluator, passed the same examination described in paragraph  
17 (1) for the purpose of demonstrating competence in evaluating  
18 medical-legal issues in the workers' compensation system.

19 (7) Does not have a conflict of interest as determined under the  
20 regulations adopted by the administrative director pursuant to  
21 subdivision (o).

22 (8) Meets any additional medical or professional standards  
23 adopted pursuant to paragraph (6) of subdivision (j).

24 (c) The administrative director shall adopt standards for  
25 appointment of physicians who are retired or who hold teaching  
26 positions who are exceptionally well qualified to serve as a  
27 qualified medical evaluator even though they do not otherwise  
28 qualify under paragraph (2) of subdivision (b). In no event shall a  
29 physician whose full-time practice is limited to the forensic  
30 evaluation of disability be appointed as a qualified medical  
31 evaluator under this subdivision.

32 (d) The qualified medical evaluator, upon request, shall be  
33 reappointed if he or she meets the qualifications of subdivision (b)  
34 and meets all of the following criteria:

35 (1) Is in compliance with all applicable regulations and  
36 evaluation guidelines adopted by the administrative director.

37 (2) Has not had more than five of his or her evaluations that  
38 were considered by a workers' compensation administrative law  
39 judge at a contested hearing rejected by the workers' compensation  
40 administrative law judge or the appeals board pursuant to this

1 section during the most recent two-year period during which the  
2 physician served as a qualified medical evaluator. If the workers'  
3 compensation administrative law judge or the appeals board rejects  
4 the qualified medical evaluator's report on the basis that it fails to  
5 meet the minimum standards for those reports established by the  
6 administrative director or the appeals board, the workers'  
7 compensation administrative law judge or the appeals board, as  
8 the case may be, shall make a specific finding to that effect, and  
9 shall give notice to the medical evaluator and to the administrative  
10 director. Any rejection shall not be counted as one of the five  
11 qualifying rejections until the specific finding has become final  
12 and time for appeal has expired.

13 (3) Has completed within the previous 24 months at least 12  
14 hours of continuing education in impairment evaluation or workers'  
15 compensation-related medical dispute evaluation approved by the  
16 administrative director.

17 (4) Has not been terminated, suspended, placed on probation,  
18 or otherwise disciplined by the administrative director during his  
19 or her most recent term as a qualified medical evaluator.

20 If the evaluator does not meet any one of these criteria, the  
21 administrative director may, in his or her discretion, reappoint or  
22 deny reappointment according to regulations adopted by the  
23 administrative director. A physician who does not currently meet  
24 the requirements for initial appointment or who has been terminated  
25 under subdivision (e) because his or her license has been revoked  
26 or terminated by the licensing authority shall not be reappointed.

27 (e) The administrative director may, in his or her discretion,  
28 suspend or terminate a qualified medical evaluator during his or  
29 her term of appointment without a hearing as provided under  
30 subdivision (k) or (l) whenever either of the following conditions  
31 occurs:

32 (1) The evaluator's license to practice in California has been  
33 suspended by the relevant licensing authority so as to preclude  
34 practice, or has been revoked or terminated by the licensing  
35 authority.

36 (2) The evaluator has failed to timely pay the fee required by  
37 the administrative director pursuant to subdivision (n).

38 (f) The administrative director shall furnish a physician, upon  
39 request, with a written statement of its reasons for termination of,  
40 or for denying appointment or reappointment as, a qualified

1 medical evaluator. Upon receipt of a specific response to the  
2 statement of reasons, the administrative director shall review his  
3 or her decision not to appoint or reappoint the physician or to  
4 terminate the physician and shall notify the physician of its final  
5 decision within 60 days after receipt of the physician's response.

6 (g) The administrative director shall establish agreements with  
7 qualified medical evaluators to assure the expeditious evaluation  
8 of cases assigned to them for comprehensive medical evaluations.

9 (h) (1) When requested by an employee or employer pursuant  
10 to Section 4062.1, the medical director appointed pursuant to  
11 Section 122 shall assign a three-member panel of qualified medical  
12 evaluators within five working days after receiving a request for  
13 a panel. If a panel is not assigned within 15 working days, the  
14 employee shall have the right to obtain a medical evaluation from  
15 any qualified medical evaluator of his or her choice. The medical  
16 director shall use a random selection method for assigning panels  
17 of qualified medical evaluators. The medical director shall select  
18 evaluators who are specialists of the type requested by the  
19 employee. The medical director shall advise the employee that he  
20 or she should consult with his or her treating physician prior to  
21 deciding which type of specialist to request.

22 (2) The administrative director shall promulgate a form that  
23 shall notify the employee of the physicians selected for his or her  
24 panel after a request has been made pursuant to Section 4062.1 or  
25 4062.2. The form shall include, for each physician on the panel,  
26 the physician's name, address, telephone number, specialty, number  
27 of years in practice, and a brief description of his or her education  
28 and training, and shall advise the employee that he or she is entitled  
29 to receive transportation expenses and temporary disability for  
30 each day necessary for the examination. The form shall also state  
31 in a clear and conspicuous location and type: "You have the right  
32 to consult with an information and assistance officer at no cost to  
33 you prior to selecting the doctor to prepare your evaluation, or you  
34 may consult with an attorney. If your claim eventually goes to  
35 court, the workers' compensation administrative law judge will  
36 consider the evaluation prepared by the doctor you select to decide  
37 your claim."

38 (3) When compiling the list of evaluators from which to select  
39 randomly, the medical director shall include all qualified medical  
40 evaluators who meet all of the following criteria:

1 (A) He or she does not have a conflict of interest in the case, as  
2 defined by regulations adopted pursuant to subdivision (o).

3 (B) He or she is certified by the administrative director to  
4 evaluate in an appropriate specialty and at locations within the  
5 general geographic area of the employee's residence.

6 (C) He or she has not been suspended or terminated as a  
7 qualified medical evaluator for failure to pay the fee required by  
8 the administrative director pursuant to subdivision (n) or for any  
9 other reason.

10 (4) When the medical director determines that an employee has  
11 requested an evaluation by a type of specialist that is appropriate  
12 for the employee's injury, but there are not enough qualified  
13 medical evaluators of that type within the general geographic area  
14 of the employee's residence to establish a three-member panel,  
15 the medical director shall include sufficient qualified medical  
16 evaluators from other geographic areas and the employer shall pay  
17 all necessary travel costs incurred in the event the employee selects  
18 an evaluator from another geographic area.

19 (i) The medical director appointed pursuant to Section 122 shall  
20 continuously review the quality of comprehensive medical  
21 evaluations and reports prepared by agreed and qualified medical  
22 evaluators and the timeliness with which evaluation reports are  
23 prepared and submitted. The review shall include, but not be  
24 limited to, a review of a random sample of reports submitted to  
25 the division, and a review of all reports alleged to be inaccurate  
26 or incomplete by a party to a case for which the evaluation was  
27 prepared. The medical director shall submit to the administrative  
28 director an annual report summarizing the results of the continuous  
29 review of medical evaluations and reports prepared by agreed and  
30 qualified medical evaluators and make recommendations for the  
31 improvement of the system of medical evaluations and  
32 determinations.

33 (j) After public hearing pursuant to Section 5307.3, the  
34 administrative director shall adopt regulations concerning the  
35 following issues:

36 (1) (A) Standards governing the timeframes within which  
37 medical evaluations shall be prepared and submitted by agreed  
38 and qualified medical evaluators. Except as provided in this  
39 subdivision, the timeframe for initial medical evaluations to be  
40 prepared and submitted shall be no more than 30 days after the

1 evaluator has seen the employee or otherwise commenced the  
2 medical evaluation procedure. The administrative director shall  
3 develop regulations governing the provision of extensions of the  
4 30-day period in both of the following cases:

5 (i) When the evaluator has not received test results or consulting  
6 physician's evaluations in time to meet the 30-day deadline.

7 (ii) To extend the 30-day period by not more than 15 days when  
8 the failure to meet the 30-day deadline was for good cause.

9 (B) For purposes of subparagraph (A), "good cause" means any  
10 of the following:

11 (i) Medical emergencies of the evaluator or evaluator's family.

12 (ii) Death in the evaluator's family.

13 (iii) Natural disasters or other community catastrophes that  
14 interrupt the operation of the evaluator's business.

15 (C) The administrative director shall develop timeframes  
16 governing availability of qualified medical evaluators for  
17 unrepresented employees under Sections 4061 and 4062. These  
18 timeframes shall give the employee the right to the addition of a  
19 new evaluator to his or her panel, selected at random, for each  
20 evaluator not available to see the employee within a specified  
21 period of time, but shall also permit the employee to waive this  
22 right for a specified period of time thereafter.

23 (2) Procedures to be followed by all physicians in evaluating  
24 the existence and extent of permanent impairment and limitations  
25 resulting from an injury in a manner consistent with Section 4660.

26 (3) Procedures governing the determination of any disputed  
27 medical treatment issues in a manner consistent with Section  
28 5307.27.

29 (4) Procedures to be used in determining the compensability of  
30 psychiatric injury. The procedures shall be in accordance with  
31 Section 3208.3 and shall require that the diagnosis of a mental  
32 disorder be expressed using the terminology and criteria of the  
33 American Psychiatric Association's Diagnostic and Statistical  
34 Manual of Mental Disorders, Third Edition-Revised, or the  
35 terminology and diagnostic criteria of other psychiatric diagnostic  
36 manuals generally approved and accepted nationally by  
37 practitioners in the field of psychiatric medicine.

38 (5) Guidelines for the range of time normally required to perform  
39 the following:



1 (A) A medical-legal evaluation that has not been defined and  
2 valued pursuant to Section 5307.6. The guidelines shall establish  
3 minimum times for patient contact in the conduct of the  
4 evaluations, and shall be consistent with regulations adopted  
5 pursuant to Section 5307.6.

6 (B) Any treatment procedures that have not been defined and  
7 valued pursuant to Section 5307.1.

8 (C) Any other evaluation procedure requested by the Insurance  
9 Commissioner, or deemed appropriate by the administrative  
10 director.

11 (6) Any additional medical or professional standards that a  
12 medical evaluator shall meet as a condition of appointment,  
13 reappointment, or maintenance in the status of a medical evaluator.

14 (k) Except as provided in this subdivision, the administrative  
15 director may, in his or her discretion, suspend or terminate the  
16 privilege of a physician to serve as a qualified medical evaluator  
17 if the administrative director, after hearing pursuant to subdivision  
18 (l), determines, based on substantial evidence, that a qualified  
19 medical evaluator:

20 (1) Has violated any material statutory or administrative duty.

21 (2) Has failed to follow the medical procedures or qualifications  
22 established pursuant to paragraph (2), (3), (4), or (5) of subdivision  
23 (j).

24 (3) Has failed to comply with the timeframe standards  
25 established pursuant to subdivision (j).

26 (4) Has failed to meet the requirements of subdivision (b) or  
27 (c).

28 (5) Has prepared medical-legal evaluations that fail to meet the  
29 minimum standards for those reports established by the  
30 administrative director or the appeals board.

31 (6) Has made material misrepresentations or false statements  
32 in an application for appointment or reappointment as a qualified  
33 medical evaluator.

34 No hearing shall be required prior to the suspension or  
35 termination of a physician's privilege to serve as a qualified  
36 medical evaluator when the physician has done either of the  
37 following:

38 (A) Failed to timely pay the fee required pursuant to subdivision  
39 (n).

1 (B) Had his or her license to practice in California suspended  
2 by the relevant licensing authority so as to preclude practice, or  
3 had the license revoked or terminated by the licensing authority.

4 (l) The administrative director shall cite the qualified medical  
5 evaluator for a violation listed in subdivision (k) and shall set a  
6 hearing on the alleged violation within 30 days of service of the  
7 citation on the qualified medical evaluator. In addition to the  
8 authority to terminate or suspend the qualified medical evaluator  
9 upon finding a violation listed in subdivision (k), the administrative  
10 director may, in his or her discretion, place a qualified medical  
11 evaluator on probation subject to appropriate conditions, including  
12 ordering continuing education or training. The administrative  
13 director shall report to the appropriate licensing board the name  
14 of any qualified medical evaluator who is disciplined pursuant to  
15 this subdivision.

16 (m) The administrative director shall terminate from the list of  
17 medical evaluators any physician where licensure has been  
18 terminated by the relevant licensing board, or who has been  
19 convicted of a misdemeanor or felony related to the conduct of his  
20 or her medical practice, or of a crime of moral turpitude. The  
21 administrative director shall suspend or terminate as a medical  
22 evaluator any physician who has been suspended or placed on  
23 probation by the relevant licensing board. If a physician is  
24 suspended or terminated as a qualified medical evaluator under  
25 this subdivision, a report prepared by the physician that is not  
26 complete, signed, and furnished to one or more of the parties prior  
27 to the date of conviction or action of the licensing board, whichever  
28 is earlier, shall not be admissible in any proceeding before the  
29 appeals board nor shall there be any liability for payment for the  
30 report and any expense incurred by the physician in connection  
31 with the report.

32 (n) Each qualified medical evaluator shall pay a fee, as  
33 determined by the administrative director, for appointment or  
34 reappointment. These fees shall be based on a sliding scale as  
35 established by the administrative director. All revenues from fees  
36 paid under this subdivision shall be deposited into the Workers'  
37 Compensation Administration Revolving Fund and are available  
38 for expenditure upon appropriation by the Legislature, and shall  
39 not be used by any other department or agency or for any purpose  
40 other than administration of the programs the Division of Workers'

1 Compensation related to the provision of medical treatment to  
2 injured employees.

3 (o) An evaluator may not request or accept any compensation  
4 or other thing of value from any source that does or could create  
5 a conflict with his or her duties as an evaluator under this code.  
6 The administrative director, after consultation with the Commission  
7 on Health and Safety and Workers' Compensation, shall adopt  
8 regulations to implement this subdivision.

9 SEC. 2. Section 3209.3 of the Labor Code is amended to read:

10 3209.3. (a) "Physician" includes physicians and surgeons  
11 holding an M.D. or D.O. degree, psychologists, acupuncturists,  
12 optometrists, dentists, podiatrists, audiologists, and chiropractic  
13 practitioners licensed by California state law and within the scope  
14 of their practice as defined by California state law.

15 (b) "Psychologist" means a licensed psychologist with a doctoral  
16 degree in psychology, or a doctoral degree deemed equivalent for  
17 licensure by the Board of Psychology pursuant to Section 2914 of  
18 the Business and Professions Code, and who either has at least  
19 two years of clinical experience in a recognized health setting or  
20 has met the standards of the National Register of the Health Service  
21 Providers in Psychology.

22 (c) When treatment or evaluation for an injury is provided by  
23 a psychologist or audiologist, provision shall be made for  
24 appropriate medical collaboration when requested by the ~~employer~~  
25 ~~or the employer,~~ insurer, *the injured worker, or the injured*  
26 *worker's representative.*

27 (d) (1) "Acupuncturist" means a person who holds an  
28 acupuncturist's certificate issued pursuant to Chapter 12  
29 (commencing with Section 4925) of Division 2 of the Business  
30 and Professions Code.

31 (2) Nothing in this section shall be construed to authorize  
32 acupuncturists to determine disability for the purposes of Article  
33 3 (commencing with Section 4650) of Chapter 2 of Part 2, or under  
34 Section 2708 of the Unemployment Insurance Code.

35 (e) (1) "Audiologist" means a person who is licensed as an  
36 audiologist pursuant to Article 3 (commencing with Section 2532)  
37 of Chapter 5.3 of Division 2 of the Business and Professions Code  
38 and holds a doctorate of audiology (Au.D.) or a Ph.D. degree in  
39 an audiology-related profession.

- 1     (2) The inclusion of audiologists in this section shall not imply
- 2     any right or entitle any audiologist to represent, advertise, or hold
- 3     himself or herself out as a physician.

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